

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REBECCA LATHON,

Defendant-Appellant.

UNPUBLISHED

March 15, 2011

No. 294565

Wayne Circuit Court

LC No. 09-002821-FC

Before: SAWYER, P.J., and MARKEY and FORT HOOD, JJ.

PER CURIAM.

A jury convicted defendant of two counts of felonious assault, MCL 750.82. She was sentenced to concurrent terms of 23 months to four years' imprisonment and appeals by right. We affirm.

At trial, defendant and the two complainants, Darryl Britton and Darryl Penson, gave very differing accounts of the events surrounding the offenses. It is undisputed, however, that Britton was shot while sitting in a car parked in his driveway. At least one shot was fired in the direction of the home's porch where Penson was standing and defendant drove the two men who fired the shots were driven to the complainants' home. Defendant denied that she willingly assisted the commission of crimes, contending that the two men forced her at gunpoint to drive them to Britton's home. By contrast, Britton testified that the gunmen looked to defendant for confirmation of Britton's identity, and, after she stated "that's him," the gunmen started shooting.

Defendant appeals the trial court's ruling follow an incident that occurred during a lunch break on the first day of trial. Britton and Detroit Police Investigator Emerson testified that during the lunch break Britton saw, for the first time since the shooting, two men who he believed were the gunmen. One of the suspected gunmen was apparently standing in and about the courthouse and at a nearby restaurant. After hearing this testimony, two jurors approached the court and indicated that they may have seen some of the events to which Britton and Emerson testified. The trial court interviewed the two jurors and then concluded that it would be prudent to excuse the jurors from the case and proceed with the alternate jurors who had been empanelled. After the jurors' dismissal, defendant requested that she be permitted to call these excused jurors as witnesses to attack the credibility of Britton and Emerson. The trial court denied defendant's request. Thereafter, the jury convicted defendant as outlined above.

Defendant argues that she was deprived of her constitutional right to present a defense when the trial court denied her request to call the excused jurors as witnesses. We disagree.

This Court reviews a trial court's decision to admit or deny evidence for an abuse of discretion. *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001). But the Court reviews de novo preliminary questions of law, such as whether an evidentiary rule precludes admission of evidence. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). The Sixth Amendment guarantees every criminal defendant the right to present witnesses in their defense. *People v McFall*, 224 Mich App 403, 407; 569 NW2d 828 (1997). But this fundamental right is not absolute and a defendant "must still comply with 'established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.'" *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984), quoting *Chambers v Mississippi*, 410 US 284, 302; 93 S Ct 1038; 35 L Ed 2d 297 (1973). The trial court must exercise its discretion in balancing of these competing interests when determining the admissibility of evidence. *People v Holguin*, 141 Mich App 268, 271; 367 NW2d 846 (1985).

Defendant argues that the two excluded jurors were present when Britton sighted the suspected gunman. Defendant contends that these two jurors "did not witness the scenes as described by Darryl Britton." Defendant, therefore, argues that the testimony of the two excluded jurors could have cast reasonable doubt on the veracity of Darryl Britton's testimony. But, as a preliminary matter, even if the excused jurors had been allowed to testify, their observations would not have served the purpose contemplated by defendant. Juror number eleven told the trial court that he saw absolutely nothing relevant to this case. He only mentioned anything to the court because, after Inspector Emerson's testimony, the juror realized that he was in the vicinity near the time Britton and Emerson discussed the sighting. Even if called, juror number eleven would not have been able to testify to any relevant facts. With respect to juror number four, her testimony regarding events she observed would not have effectively attacked Emerson's or Britton's credibility. This juror only observed events in the restaurant. Britton did not testify about any encounter with the gunman in the restaurant. Emerson testified that he went to the restaurant and escorted the complainants back to the courthouse for their safety. Juror number four's statement to the court did not conflict with the testimony given by the witnesses. Her statement, which noted that Britton was nervous and Penson told his son to come and sit back down, was consistent with Britton's testimony that he had seen the man who shot him during the lunch break. Thus, the testimony of the excused jurors would not have assisted defendant in her defense.

In any event, precluding the testimony of the excused jurors was appropriate pursuant to MRE 403. This evidentiary rule provides that "although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." The prosecution's case would have been unduly prejudiced with the admission of the juror's testimony. The excused jurors had had personal interactions with the remaining jurors on the case. It is likely that the jurors considering the case would have been influenced by their relationship with the excused jurors and have given undue weight to their testimony. Thus, even if the excused jurors could have offered slightly probative testimony, it would have been substantially outweighed by the danger of unfair prejudice. Moreover, events outside the courtroom during the trial were collateral to the issues being tried.

and, at best, related only to Briton's general credibility. It is well-established that extrinsic evidence of collateral matters may not be introduced to impeach a witness's general credibility. See *People v Fuzi #1*, 116 Mich App 246, 251-252, n 3; 323 NW2d 354 (1982), and *People v Fuzi #2*, 116 Mich App 277, 280; 323 NW2d 358 (1982). The trial court properly denied defendant's request to call the dismissed jurors as witnesses during the trial. MRE 403.

We affirm.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Karen M. Fort Hood